

Decision 02-10-060 October 24, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's Own Motion to
Comply with the Mandates of Senate Bill 1712.

Rulemaking 01-05-046
(Filed May 24, 2001)

OPINION COMPLETING PROCEEDING AND CLOSING DOCKET

Summary and Background

The Commission initiated this proceeding to respond to Senate Bill (SB) 1712 (Polanco, Ch.943, Stats. 2000), codified as Pub. Util. Code §§ 871.7 and 883, which requires this Commission to open an investigation into the feasibility of redefining universal telephone service to include high-speed internet access, and to report its findings to the Legislature. The legislation also requires that the Commission hold "public hearings that encourage participation by a broad and diverse range of interests from all areas of the state." (Section 883(a).)

The Commission held Public Participation Hearings throughout the state, and interested members of the public made their views known on the issues to be addressed in this proceeding. In the formal phase of this proceeding, the Commission received two rounds of generally well-researched and carefully reasoned comments from the formal parties. With this information, as well as the results of Commission staff work, the Commission prepared and submitted the required report to the Legislature on August 14, 2002. All formal parties were mailed a copy of the report on August 15, 2002.

Summary of the Report

In its report, “Broadband Services as a Component of Basic Telephone Service,”¹ the Commission found that current conditions do not support including broadband services in basic telephone service. The Commission considered whether expanding the definition of basic service to include broadband was feasible, as defined in the statute, and concluded that it was not, primarily due to the resulting cost to be allocated to all other users, as well as the monthly price lifeline customers would be required to pay. The Commission recognized that low-cost basic telephone service is key to maintaining and increasing access to the Internet for all Californians. Most on-line Californians, regardless of income level, use dial-up services as their means to access the Internet. Basic telephone service is required for this access. Persons that cannot afford basic telephone service are denied this form of access, as well as essential telephone communication. In the report, the Commission concluded that it should maintain its commitment to keeping basic telephone service as affordable as possible, as well as expanding certain subsidy programs to enhance low-cost telephone access to certain groups.

Further Actions

In addition to taking comment on the changes proposed by SB 1712, the Commission also sought comment on the California Teleconnect Fund (CTF), a long-standing Commission program that provides telecommunication rate discounts to schools, libraries, medical clinics, and community-based organizations (CBO). Many CTF recipients successfully offer underserved communities access to the Internet through publicly available computers and

¹ A copy of the report is Appendix A.

Internet connections. The CTF assists schools, libraries, and other sites in offering these programs by reducing the costs of telecommunications services.

Comments from the public and certain parties provided suggestions for expanding the CTF. The report concludes that the disparate levels of discounts—20% for hospitals, 25% for CBOs, and 50% for schools and libraries—may have played a role in the low level of participation by hospitals and CBOs. Therefore, the Commission should modify the CTF rules to allow each group to obtain not only the same discount level, but also to have access to the same types and quantities of services at a discount. In today's decision we direct the Telecommunications Division to prepare a resolution implementing these changes.

In addition to the changes to CTF, the Commission and its staff will continue to monitor and review the expanding role of the Internet in the economic, social, and civic life of Californians. The Commission continues to support efforts to enhance access to this important service.

Conclusion

Having completed the work assigned by the Legislature in SB 1712 and provided the required report, the Commission has achieved the objectives of this docket. As noted above, other on-going actions will continue, albeit in other forums.

Need for a Hearing

In its May 14, 2002 Order Instituting Rulemaking, the Commission announced that the procedural process for this docket would consist of two rounds of written comments from a broadly based group. Those comments also served as the parties' opportunity, under Rule 6(c)(2) of the Commission's Rules of Practice and Procedure (Rules) to respond to the need for a hearing. No party

sought a change of hearing determination pursuant to Rule 6.5(b). Therefore, as provided in Rule 6.6, Article 2.5 of the Rules ceases to apply to this proceeding.

Comments on Draft Decision and Report

The draft decision of Administrative Law Judge Bushey in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules.

AT&T Communications of California filed comments supporting the draft decision and the determination that expanding the definition of basic service to include broadband services is not feasible. Verizon California, Inc. (Verizon) filed comments stating that the report submitted to the Legislature properly concluded that broadband services should be included in the definition of basic services at this time. Roseville Telephone Company's comments agreed that it is infeasible at this time to redefine universal service to include access to broadband services and supported closing the docket. La Raza² filed comments raising both procedural and substantive issues that are addressed below. The Office of Ratepayer Advocates filed reply comments in which it echoed Verizon's quotation of a report from the Federal Communications Commission which concluded that: "the cost of adding advanced services to the definition of supported services would be contrary to the public interest and that these services are not yet considered to be essential." The Latino Issues Forum and the Greenlining Institute also filed reply comments. These groups recommended that the Commission appoint a blue-ribbon panel of experts in advanced

² "La Raza" is a group of intervenors comprised of: the National Council of La Raza, the Southern Christian Leadership Conference of Greater Los Angeles, and the California Rural Indian Health Board.

telecommunications technologies and representatives of low-income communities to formulate a long-term plan for implementing SB 1712 including deployment of advanced technologies to universal service customers. These groups also recommended further expansion of the CTF for community-based organizations.

A. La Raza's Procedural Issues

La Raza raised allegations of three procedural errors. These allegations focus on the Commission failing to provide for the parties to review and comment on information contained in the report. The allegations are not persuasive, however, because the parties have reviewed and commented on the report. Every party, except La Raza, that filed such comments agreed with the conclusions of the report. La Raza's substantive comments on the report are addressed separately below.

La Raza's first procedural allegation is that the parties did not have an opportunity to comment on the substance of the report in violation of Rule 8.1 of the Commission's Rules of Practice and Procedure (Rules) and Pub. Util. Code § 311(d). We note that the draft decision specifically sought comment on the report and that La Raza submitted such comments, which are discussed below. Should the Commission have found those comments persuasive, the Commission could have in this decision reached conclusions that differed from the report and transmitted those revised conclusions to the Legislature.

Second, La Raza took issue with the language of the decision that suggested that the entire Commission had approved the report when, in fact, only the assigned Commissioner and the President of the Commission had transmitted the report. A finding of fact has been corrected in this respect.

Third, La Raza contended that the report relied on evidence not contained in the record, which violated Rule 1.2. As noted by La Raza, the report includes a cost study performed by the Commission's Telecommunications Division as well as research performed by the Commission's Division of Strategic Planning. This information is clearly stated in the report, along with all assumptions and citations. La Raza has submitted comments on the information, alleging that it contains errors. The report is included in the record of this proceeding.

B. La Raza's Substantive Issues

La Raza's substantive issues focus on the Legislature's statutory directive to the Commission and the cost estimate for expanding the definition of basic service to include broadband. Both of these issues were raised in La Raza's earlier comments, and were addressed in the report.

La Raza took issue with the draft decision's determination that the Commission has completed the work assigned by the Legislature in SB 1712. La Raza stated that the statute directs the Commission to incorporate advanced technologies in the definition of basic service and that the Commission has not done so.

This issue is at the core of La Raza's substantive objections to the report. La Raza contends that the Legislature has determined that the definition of basic service should be expanded to include broadband and that the only determination to be made by the Commission is how best to accomplish this directive. La Raza's reading of the statute, however, is incomplete.

In Pub. Util. Code § 883(b)(1), the Legislature directed the Commission to investigate the "feasibility" of expanding the definition of basic service to include broadband services. The Legislature defined "feasibility" in Pub. Util.

Code § 871.7(d) as being consistent with all of the following: (1) technological and competitive neutrality, (2) equitable distribution of the costs among all regulated and non-regulated customers, and (3) benefits that justify the costs. The report considers each of these standards, and the Commission's own standards for re-defining basic service, and concludes that the standards have not been met. Having found that the standards have not been met, the report determines that the definition of basic service should not be expanded at this time.

La Raza's next substantive issue is with specific details of the cost analysis provided by the Commission's staff. La Raza provided a declaration in support of its assertion that re-defining basic service to include broadband is feasible. La Raza's own declaration, however, argued that a \$20-a-month charge for broadband is feasible if more than 50% and close to 65% of the customers purchase such service. La Raza does not state how such a purchase rate would be achieved. However, even if we assume La Raza's hypothesized purchase rate, the current lifeline subsidy rate of one-half unsubsidized charges would result in an additional cost of \$10 per month to all lifeline customers. (All non-lifeline customers would pay the remaining \$10 per month via increased surcharges.) This would result in almost tripling the monthly fee (from \$5.34 to \$15.34) for all the low-income customers, and greatly increasing the lifeline surcharge for all other customers. Consequently, even if we disregard our staff's work and accept La Raza's cost study, the conclusion in the report remains valid—lifeline rates would substantially and unacceptably increase.

Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Maribeth A. Bushey is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. On August 14, 2002, the Assigned Commissioner and the President of the Commission transmitted the report required by SB 1712 to the Legislature.
2. The Commission will pursue issues related to SB 1712 in other forums.
3. The report recommends providing hospitals and CBOs the same CTF discount level and access to the same types and quantities of services available to schools and libraries.

Conclusions of Law

1. This proceeding should be closed.
2. The Telecommunications Division should be directed to prepare a resolution modifying the CTF as discussed herein.

O R D E R

Therefore, **IT IS ORDERED** that:

1. The report "Broadband Services as a Component of Basic Telephone Service" is Appendix A.
2. The Telecommunications Division is directed to prepare a resolution for Commission consideration that modifies the California Teleconnect Fund to offer the same quantities of services and discounts currently available to schools and libraries to eligible hospitals and community-based organizations.
3. This proceeding is closed.

This order is effective today.

Dated October 24, 2002, at San Francisco, California.

LORETTA M. LYNCH
President

HENRY M. DUQUE
CARL W. WOOD
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners

APPENDIX A

http://www.cpuc.ca.gov/static/industry/telco/020814_broadband_report.htm

Broadband Services as a Component of Basic Telephone Service

(END OF APPENDIX A)